

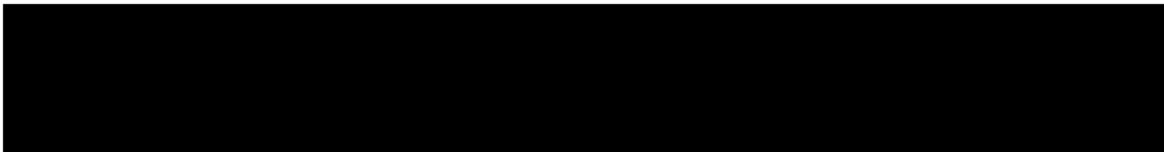


Eric Gonzalez
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**
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Paul Ostrer
Assistant District Attorney

March 25, 2021



In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: **GIUSEPPE OLIVERI**

MOS TAX: **939146**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:

THE PEOPLE ARE AWARE OF THE FOLLOWING FEDERAL CIVIL RIGHTS ACTION(S) AND/OR STATE TORT CIVIL LAWSUIT(S) IN WHICH THE INDICATED OFFICER HAS BEEN NAMED AS AN INDIVIDUAL DEFENDANT. NOTE, THE DISPOSITION INFORMATION MAY NOT BE CURRENT:

1. FAHAD UMAR V. CITY OF NEW YORK, ET AL, 11-CV-2796, FILED IN THE EASTERN DISTRICT OF NEW YORK

Disclosure # 2:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 01/15/2013, AGAINST MOS OLIVERI:
ALLEGATIONS:

1. MOS OLIVERI, ASSIGNED TO THE 62ND PRECINCT, ON JANUARY 15, 2013, FAILED TO PROMPTLY NOTIFY HIS COMMANDING OFFICER THAT HE WAS THE PETITIONER IN A FAMILY COURT ORDER OF PROTECTION.
2. ON APRIL 28, 2013, MOS OLIVERI FAILED TO NOTIFY THE OPERATIONS UNIT AFTER BEING INVOLVED IN AN UNUSUAL OFF DUTY INCIDENT AT HIS RESIDENCE IN NASSAU COUNTY THAT REQUIRED THE RESPONSE OF THE NASSAU COUNTY POLICE DEPARTMENT

CASE STATUS: CLOSED ON 12/28/2013

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE, LOSS OF TWO (2) HOURS

Disclosure # 3:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 02/06/2013, AGAINST MOS OLIVERI:
ALLEGATION(S):

1. DOMESTIC INCIDENT - HARASSMENT - ORDER OF PROTECTION
2. DOMESTIC INCIDENT - VERBAL DISPUTE - ORDER OF PROTECTION
3. FAIL TO NOTIFY INTERNAL AFFAIRS BUREAU

CASE STATUS: CLOSED ON 11/12/2013

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE

Disclosure # 4:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 08/03/2016, AGAINST MOS OLIVERI:

ALLEGATION(S):

1. MOS OLIVERI, WHILE ASSIGNED TO THE 62ND PRECINCT, ON OR ABOUT AUGUST 3, 2016, DID FAIL TO FOLLOW THE PROPER PROCEDURES WHEN TRANSPORTING A NON-MEMBER OF SERVICE IN A MARKED RADIO PATROL CAR

CASE STATUS: CLOSED ON 04/27/2017

ACTION TAKEN: SCHEDULE B COMMAND DISCIPLINE, FORFEITURE OF TWO (2) VACATION DAYS

Disclosure # 5:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION(S), DATED 08/04/2016, AGAINST MOS OLIVERI:

ALLEGATION(S):

1. OTHER DEPARTMENT RULES/PROCEDURES VIOLATION
2. MEMOBOOK INCOMPLETE IMPROPER

CASE STATUS: CLOSED ON 11/07/2017

Disclosure # 6:

MOS OLIVERI WAS TRIED AND FOUND GUILTY OF THE FOLLOWING NYPD DEPARTMENTAL CHARGES AND SPECIFICATIONS, ARISING OUT OF AN INCIDENT ON OR ABOUT 10/08/2016:

1. MOS OLIVERI, WHILE OFF-DUTY AND ASSIGNED TO THE 62ND PRECINCT, ON OR ABOUT OCTOBER 8, 2016, DID WRONGFULLY ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY, AND DISCIPLINE OF THE DEPARTMENT, TO WIT: SAID MOS OLIVERI FAILED TO COMPLY WITH THE DIRECTIONS OF AN ON-DUTY NASSAU COUNTY POLICE LIEUTENANT TO PRODUCE HIS NYPD IDENTIFICATION AND TO LEAVE THE SCENE OF AN ON-GOING POLICE INVESTIGATION.

CASE STATUS: CLOSED ON 12/28/2017

ACTION TAKEN: FORFEITURE OF TEN (10) VACATION DAYS

Note: AS A RESULT OF TESTIMONY MOS OLIVERI PROVIDED IN THE DISCIPLINARY TRIAL THAT WAS HELD REGARDING THIS INCIDENT, THE DEPARTMENT JUDGE FOUND AT LEAST A PORTION OF THAT TESTIMONY INCREDIBLE. THE JUDGE'S DECISION AND RELATED NYPD DOCUMENTS ARE ATTACHED BELOW

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH FEBRUARY 10, 2021, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 7:

CCRB CASE: 201903853

REPORT DATE: 05/04/2019

INCIDENT DATE: 04/30/2019

CCRB SUBSTANTIATED ALLEGATION(S):

1. ABUSE - THREAT OF ARREST
2. ABUSE - THREAT RE: REMOVAL TO HOSPITAL

Eric Gonzalez
District Attorney
Kings County



POLICE DEPARTMENT CITY OF NEW YORK

November 13, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Giuseppe Oliveri
Tax Registry No. 939146
62nd Precinct
Disciplinary Case No. 2017-16838

Charges and Specifications:

1. Said Police Officer Giuseppe Oliveri, while off-duty and assigned to the 62 Precinct, on or about, October 8, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said Police Officer Oliveri intervened with an on-going [REDACTED] County Police Department operation.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT, GENERAL REGULATIONS
2. Said Police Officer Giuseppe Oliveri, while off-duty and assigned to the 62 Precinct, on or about, October 8, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said Police Officer Oliveri failed to comply with the directions of an on-duty [REDACTED] County Police Lieutenant to produce his NYPD Identification and to leave the scene of an on-going police investigation.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT, GENERAL REGULATIONS
3. Said Police Officer Giuseppe Oliveri, while off-duty and assigned to the 62 Precinct, on or about, October 8, 2016, did wrongfully consume an intoxicant to the extent that said officer was unfit for duty.
P.G. 203-04, Page 1, Paragraph 1 - FITNESS FOR DUTY - GENERAL REGULATIONS

Appearances:

For the Department: Jordan Farnham, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:
September 21, 2017

Decision:
Specifications 1 and 3: Not Guilty; Specification 2: Guilty

Trial Commissioner:
ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on September 21, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Jimmy Brown of the [REDACTED] County Police Department and Lieutenant Richard Tully as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of Specification 2. I further find Respondent Not Guilty of Specifications 1 and 3.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. On October 8, 2016, at approximately 2130 hours, Lieutenant Jimmy Brown, a 20-year veteran of the [REDACTED] County Police Department, was supervising a narcotics operation in the vicinity of [REDACTED] [REDACTED] New York (T. 12, 13-14). Lieutenant Brown's contingent included approximately nine plainclothes officers and detectives, one uniformed canine officer, five to six unmarked

police vehicles and one marked canine police vehicle (T. 15, 16-17). All the plainclothes members of Lieutenant Brown's team wore ballistic vests with police markings on the rear and wore police shields around their necks (T. 16).

At approximately 2130 hours, the sole suspect in the operation had been handcuffed and lay prone in the street (T. 17-18, 23). The members of Lieutenant Brown's team were conducting a search of the suspect's vehicle, as well as a search of the surrounding area (T. 24-25). Immediately after the arrest, the turret lights on the unmarked vehicles were illuminated and at least one vehicle had activated its siren (T. 19). Lieutenant Brown spoke to several people on the street who came out of houses to inquire about the operation (T. 19-22). Lieutenant Brown identified himself, warned them that an operation was ongoing and asked them to return to their homes until the operation was concluded (*Id.*). The onlookers returned to the houses from which they had come without incident (*Id.*).

There came a point in time when Lieutenant Brown observed Respondent exit █ and walk in the direction of the crime scene (T. 23, 26-27). Lieutenant Brown had a verbal confrontation with Respondent, the specifics of which are in dispute. During the course of the confrontation, Lieutenant Brown requested that Respondent produce his police identification. Respondent did not immediately respond to the request but after some discussion, produced his police identification.

Lieutenant Brown made a notation of Respondent's name, command and tax number, then returned the identification to him (T. 42). Two members of Lieutenant Brown's team escorted Respondent back onto the sidewalk away from the street (*Id.*). Lieutenant Brown and his team eventually concluded the operation and returned to their command before ending their

tours (T. 51). On the following Monday, Lieutenant Brown reported the interaction he had with Respondent on [REDACTED] County Police Department incident reporting system (*Id.*).

As a result of Lieutenant Brown's report, an interdepartmental notice was sent to this Department on or about October 12, 2016 (T. 97). On October 16, 2016, Lieutenant Richard Tully, a 36-year veteran of this Department, assigned to Brooklyn South Investigations, was detailed to investigate the allegations contained in Lieutenant Brown's report (T. 96-97). Lieutenant Tully sought an in-person interview with Lieutenant Brown, but the request was denied (T. 98). In accordance with [REDACTED] County Police Department policy, Lieutenant Tully submitted questions to a [REDACTED] County police supervisor, who posed them to Lieutenant Brown, then relayed Lieutenant Brown's answers to Lieutenant Tully (T. 54).

At issue in this case is whether Respondent: (1) intervened in a police investigation; (2) failed to leave the scene of the investigation, as he was directed to do, then failed to provide his police identification to an on-duty [REDACTED] County Police Lieutenant after it was requested; and (3) rendered himself unfit for duty by consuming intoxicants. The Department has argued that Respondent ignored Lieutenant Brown's directives to step out of the street and return to the sidewalk, thereby intervening in an investigation. The Department has further argued that Respondent had an obligation to provide his police identification to Lieutenant Brown when it was requested, rather than conditioning his tender of identification upon Lieutenant Brown showing his police identification first. Finally, the Department has argued that Respondent was unfit for duty, as evidenced by Lieutenant Brown's observation of signs of intoxication.

Respondent has taken the position that: (1) he did not intervene in an ongoing investigation; (2) he provided his identification; and (3) he was not unfit for duty.

The following is a summary of the facts which are in dispute. When Lieutenant Brown first observed Respondent walking from [REDACTED] into the street, he noticed that Respondent did not seem apprehensive about approaching police officers in the middle of an operation, as most people in his experience were (T. 28). Lieutenant Brown, accompanied by Police Officer O'Moore, walked over to Respondent to intercept him and stated, "I'm Lieutenant Brown with the [REDACTED] County Police Department. Do me a favor and just stop right there" (T. 29). Lieutenant Brown was of the opinion that Respondent was intoxicated based upon his gait, which he described as labored, as if he had to "put some thought into his movements. . ." (T. 30). Respondent replied, "I know the people across the street, they're good people" (*Id.*). Lieutenant Brown responded by telling Respondent that the operation had "nothing to do with the people across the street; this guy [pointing toward the handcuffed suspect] is not from around here, so they're fine, it's got nothing to do with them" (T. 31).

Respondent repeated his statement, saying, "I know them; they are good people" (T. 34). Lieutenant Brown again explained, "This has nothing to do with your neighbors. It has nothing to do with it. This gentleman is not from around here. Can you do me a favor and just go back up on the front lawn? Give me a few minutes, I'll come up and I'll explain what's going on" (*Id.*). Respondent replied, "I'm not doing anything wrong; I don't have to" (T. 35). Lieutenant Brown spoke to Respondent again, saying, "Do me a favor. We're conducting an operation, please go back up on the front lawn," to which Respondent replied, "I don't have to" (*Id.*). Lieutenant Brown concluded that Respondent was intoxicated, in part because his warnings were "not registering with him" and because he appeared to be looking off in the distance, instead of toward Lieutenant Brown and Police Officer O'Moore (*Id.*).

Lieutenant Brown then said, "I'm no longer asking you to go up on the front lawn, I'm telling you to go up on the lawn," then took a step toward Respondent with his arms raised (T. 36). Respondent then stated, "I'm on the job," which Lieutenant Brown understood to mean Respondent was a member of law enforcement (*Id.*). Lieutenant Brown asked Respondent where he worked and he responded, "The '62'" (T. 37). Lieutenant Brown asked Respondent why he did not identify himself earlier, to which Respondent replied, "I don't have to" (T. 38).

Lieutenant Brown then asked Respondent to produce his police identification and Respondent replied, "No" (T. 38-39). Lieutenant Brown responded, "If I was ever in New York City and you guys were conducting an investigation, in my wildest dreams I would never ... think to impede upon your investigation the way you have here tonight, and I sure as hell wouldn't stay after I was asked to leave" (T. 39). Lieutenant Brown asked Respondent again for his police identification and Respondent stated, "I'm not showing you my ID until you show me yours" (*Id.*, 85). Lieutenant Brown repeated his demand, stating, "I need to see your ID card, you need to formally identify yourself" (T. 40). Respondent again replied, "I'm not showing you anything until you show me your ID card" (*Id.*). Police Officer O'Moore then added, "Hey buddy, he's a [REDACTED] County Police Department lieutenant and he's in charge of this entire operation," but Respondent still did not produce his police identification (*Id.*).

Lieutenant Brown then retrieved his own police identification from his wallet and showed it to Respondent, stating [REDACTED] County Police Department lieutenant" (T. 40-41). Respondent then provided Lieutenant Brown with his NYPD identification card, which Lieutenant Brown observed bore the name Giuseppe Oliveri, along with a tax number and "62" (T. 41). Lieutenant Brown recorded the information and returned the identification card to Respondent (T. 42). Respondent was then escorted back onto the sidewalk by two members of Lieutenant Brown's

team (*Id.*). Lieutenant Brown testified that one of the two officers who escorted Respondent away from the street returned to him and stated, "He's shitfaced," referring to Respondent (T. 44). Lieutenant Brown came to the conclusion that Respondent was intoxicated based upon his observations of

"the way he walked, the way he stood in front of me, he constantly shuffled his feet as if, I don't want to say he was wobbling or anything, it wasn't that drastic, but he constantly shuffled his feet as if he were repositioning himself and gaining balance, very subtle but it was noticed. His eyes were glassy. I did not smell any alcohol on his breath, nor did I get very close to him at any given time. But his speech was a little off as well, it was somewhat slurred, totally recognizable. I could understand everything he was saying but, it was slightly slurred. His words were slightly drawn out, indicative of intoxication"

(T. 46).

On cross-examination, Lieutenant Brown testified that while he could have made his report concerning Respondent's behavior the next day, which was his day off and which would have entitled him to overtime pay, he did not believe that doing so would have been a judicious use of resources (T. 60, 83). Lieutenant Brown conceded that while he did not have legal authority to order people back into their homes, he could ask them to do so (T. 76-77).

Lieutenant Brown described the "crime scene" as the street and expressed the view that he had legal authority to order someone out of the street if they stepped off the sidewalk (T. 78).

Lieutenant Brown also conceded that while he believed Respondent to be intoxicated, Respondent had not broken any laws (T. 84). Lieutenant Brown further conceded that according to [REDACTED] County Police Department regulations, if in plainclothes and requested to do so by a civilian, he was required to show his badge and identify himself by name and shield number but was not obligated to present his identification card (T. 86-87). Lieutenant Brown further conceded that while he believed he had probable cause to arrest Respondent for Obstructing Governmental Administration, he chose not to (T. 92). Finally, Lieutenant Brown testified that

he reported the incident with Respondent because "I would be remiss and it would be a dereliction on my part not to make the New York City Police Department aware of the abhorrent behavior of one of their off-duty police officers in regard to dealing with on-duty [REDACTED] County police officers that are conducting what would be considered a pretty dynamic scene outside in our jurisdiction" (T. 94).

Respondent testified that on October 8, 2016, at about 2000 hours, he was a dinner guest of Person A, who resides at [REDACTED] (T. 119-120). Person A lives across the street from Respondent's relatives (T. 120). Respondent was scheduled to work that evening with a reporting time of 2315 hours (T. 121). At approximately 2130 hours, Person A told Respondent, "You may want to go check up on your [REDACTED], something is going on outside" (T. 122, 132). Respondent testified that as he stepped outside the residence and was descending the steps, he saw Lieutenant Brown, who he described as a plainclothes officer (*Id.*). Respondent testified further that he saw turret lights and five or six unmarked police cars (*Id.*).

As Respondent was walking across the street, Lieutenant Brown, who was in the street with Police Officer O'Moore, raised his hand in the air and said, "You need to get back in the house right now," in an abrupt manner (T. 125). Respondent stopped for a moment, then asked Lieutenant Brown, "Who may you be?" (T. 126). Lieutenant Brown, who Respondent could see had a police shield around his neck, replied, "I'm a lieutenant from the [REDACTED] County Police Department" (*Id.*). Respondent then stepped closer and asked if he could see Lieutenant Brown's identification card (*Id.*).

Respondent claimed that at the time of his interaction with Lieutenant Brown, he thought "there was something going on. Like I said, I figure it's some sort of police activity, but my mind was on my [REDACTED] that's all. That's all it was. I was just so nervous. I was really nervous

about it" (*Id.*). Respondent denied doing anything to make Lieutenant Brown think he might be intoxicated and denied consuming any alcoholic beverages (*Id.*).

According to Respondent, Lieutenant Brown did not respond to him, so he stepped closer and said, "Look, Lieutenant, no disrespect, we are both in plainclothes, could you please show me your ID card" (T. 127). Lieutenant Brown then went to his back pocket, removed his ID card and showed it to Respondent (*Id.*). Respondent claimed that two minutes into their conversation, Lieutenant Brown asked him, "Who may you be?," at which point Respondent replied, "I'm on the job" (*Id.*). Lieutenant Brown then asked Respondent, "Why didn't [you] tell me?," to which Respondent replied, "You didn't ask" (*Id.*). Lieutenant Brown then asked Respondent for his police identification; Respondent removed his wallet from his back pocket and displayed it to him (*Id.*). Lieutenant Brown directed Respondent to remove the card from his wallet, which he did, handing it to Lieutenant Brown (T. 127-128).

Lieutenant Brown wrote something down on a piece of paper, then returned Respondent's card to him. Respondent confirmed that he told Lieutenant Brown, "I know those people across the street. They are good people. That's my [REDACTED] who lives across the street." According to Respondent, Lieutenant Brown never gave him permission to go across the street, but departed from him and "went about his business." Respondent returned to [REDACTED], called [REDACTED] on the telephone and verified that [REDACTED] was safe (T. 128).

Respondent left Person A's home at approximately 2200 hours and drove to the 62nd Precinct, arriving at approximately 2300 hours (T. 131). Respondent worked until 0750 hours on October 9, 2016 (T. 135). Respondent denied interfering with an investigation or consuming any intoxicants (T. 136-137). Respondent further asserted that he provided his NYPD identification when asked for it and left the scene when directed (T. 137).

On cross-examination, Respondent conceded that he had never come upon a situation during his police career where he observed five to six unmarked vehicles with activated turret lights where the individuals involved were not police officers (T. 143). Despite this concession, Respondent maintained that it was only after he had seen Lieutenant Brown's police identification that he concluded he was observing a police operation:

- Q. So it's your testimony here today that after seeing five to six vehicles unmarked with turret lights activated and seeing a lieutenant with a shield around his neck and seeing a K-9 officer in uniform and seeing an individual in handcuffs on the ground, that this still may not be connected to police activity?
- A. No. I determined that it was later, that it was some sort of police activity.
- Q. Did you make that determination before or after you asked Lieutenant Brown for his identification?
- Q. I made that after.

(T. 144-145). In response to a question posed by the Tribunal as to why he asked Lieutenant Brown for identification, Respondent testified, "To be honest with you, in the past in my neighborhood where I come from there were robberies going on where you had persons impersonating police officers in unmarked cars and they were robbing people. They even at one point handcuffed them, robbed them and left there and took off from the scene" (T. 149). Finally, Respondent affirmed that he told Lieutenant Brown, "I know these people over there, they're good people" (T. 150).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. The more important the evidence is to the case, the more critically it should be assessed (*Police Department v. Acosta*, OATH Index No. 464/00 [Jan. 7, 2000]; *Police Dep't v. Ruocco & Crowley*, OATH Index Nos. 575/89; 576/89 [March 28, 1990]). Factors such as corroboration, consistency, bias, logic and

the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297 [1st Dep't 1994]).

In this case, Lieutenant Brown testified forthrightly and credibly. He is an experienced police officer and a disinterested witness whose testimony was based upon first-hand observation. There is no evidence of bias in the record sufficient to cause this tribunal to question his credibility. The nature of Respondent's behavior, as Lieutenant Brown testified to it, is so outlandish that it is unlikely that an experienced law enforcement officer would fabricate the details of such an encounter with a fellow law enforcement officer. When asked why he reported Respondent to this Department, Lieutenant Brown stated that he had never dealt with a New York City police officer who had behaved so unprofessionally. While Lieutenant Brown's characterization of Respondent's conduct is harsh, it is not so vituperative to suggest that his testimony was motivated by vindictiveness.

Similarly, Lieutenant Tully is another senior police officer who has no interest in the outcome of this case; he merely testified to his investigative efforts to obtain statements from Lieutenant Brown and Respondent. I credit his testimony in its entirety.

In contrast, Respondent's testimony was self-serving and illogical. In his attempt to proffer a plausible explanation for allegedly unprofessional conduct, Respondent damaged his own credibility by suggesting that he was unsure of whether Lieutenant Brown and his officers were police impersonators. Respondent conceded that he saw unmarked cars with turret lights, a uniformed police officer, a handcuffed suspect in the street and a police lieutenant with a shield around his neck, yet expressed doubt that he was observing an actual police operation. This assertion is dubious on its face but especially so when made by an experienced police officer. The assertion becomes even more absurd when considered against Respondent's vouching for,

and giving the location of, his relatives while he professed to suspect that Lieutenant Brown and his officers were highwaymen about to victimize the residents of [REDACTED]

Under all the attendant circumstances, and having had the opportunity to observe the demeanor of both witnesses during the trial, I find Lieutenant Brown's version of events to be more plausible.

Intervening in an Ongoing Police Investigation

Specification 1 alleges that Respondent engaged in conduct prejudicial to good order, efficiency and discipline of this Department by intervening in an ongoing police investigation (Patrol Guide 203-10, ¶5). The term "intervene" is not defined in Patrol Guide 203-10; accordingly, an examination of the most analogous criminal statute, Obstructing Governmental Administration in the Second Degree (P.L. § 195.05), is instructive.

A person is guilty of Obstructing Governmental Administration in the Second Degree when such person "intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. . . ."

The statute does not apply to any difficulty placed in the way of an arrest or procedure. "Were the law otherwise, it would follow that whenever any barrier is placed in the path of process and/or arrest, this class A misdemeanor (obstructing) could be added" (*People v Offen*, 96 Misc.2d 147, 150 (Crim Ct, N.Y. County 1978); see also *Matter of Davan L*, 91 NY2d 88 [1997]). Obstructing Governmental Administration is meant to proscribe conduct designed to interrupt or shut down administrative governmental operations, but it does not proscribe every action which

makes the process of arresting a defendant more difficult than it might otherwise be (*see People v Lopez*, 97 Misc2d 124 [Crim Ct, Bronx County 1978]).

Interference, under the statute, must be "in part at least, physical in nature" (*People v Case*, 42 NY2d 98, 102 [1977]). Courts have held that words alone are insufficient to constitute a violation of the statute (*see Lopez*, 97 Misc.2d at 125; *People v Ketter*, 76 Misc.2d 698 [Crim Ct, Bronx County 1974]).

In this case, it is undisputed that the suspect in Lieutenant Brown's investigation was already under arrest and in handcuffs at the time Respondent stepped into the street. The record is devoid of any evidence that Respondent had physical contact with Lieutenant Brown or any other police officer on the scene. There is similarly no evidence that his physical presence in the street prevented or inhibited any aspect of the post-apprehension procedures being employed by Lieutenant Brown's unit. To the extent that Lieutenant Brown himself may be considered a police resource, the efforts he expended in verbally interacting with Respondent differed from his previous verbal interactions with other residents of [REDACTED] only in terms of duration. Respondent's behavior during his interaction with Lieutenant Brown was not professional, and may well have been annoying, but there is insufficient evidence to establish that he intervened in the investigation.

Accordingly, I find Respondent Not Guilty of Specification 1.

Failure to Comply with Directions

Based upon a preponderance of the credible, relevant evidence, I find that Respondent failed to comply with two directions given to him by Lieutenant Brown: first, to step back onto the sidewalk, and second, to produce his police identification.

The credible evidence establishes that Respondent not only failed to comply with Lieutenant Brown's direction to move back to the sidewalk, but that he pointedly refused to do so twice, asserting, "I'm not doing anything wrong; I don't have to" and "I don't have to" (T. 35). Respondent's unambiguous refusals are sufficient evidence, standing alone, to establish a violation of Specification 2. According to Lieutenant Brown's credible testimony, he exhorted Respondent three times to step back onto the sidewalk, as there was an ongoing police investigation. Lieutenant Brown's exhortations were unambiguous and should have carried the weight of a lawful directive issued by a police officer. As a Member of Service, Respondent should have immediately recognized the import of Lieutenant Brown's directive and complied with it. Even if, as Respondent claimed in his testimony, he was concerned about the well-being of his relatives across the street, he could have alerted Lieutenant Brown to this concern while complying with his directive. Thus, I find that Respondent failed to comply with Lieutenant Brown's directive to step out of the street and back onto the sidewalk.

Turning to Lieutenant Brown's request that Respondent provide his police identification, Respondent's first response was an unambiguous, "No" (T. 38-39). Lieutenant Brown made two more requests for Respondent to produce his identification, both of which were met with a counter-demand that Lieutenant Brown produce his own identification as a precondition to Respondent producing his. Since it was Respondent who asserted that he was "on the job," he should have expected, and been prepared, to properly identify himself as a New York City Police Officer.

Patrol Guide 212-36, concerning incidents with former or retired members of the service and off-duty or retired Federal, State and City law enforcement agents, while not controlling, is nevertheless instructive. "When a uniformed member of the service responds to or becomes

aware of an incident with the potential for a confrontation involving a former/retired member of the service or off duty/retired Federal, State or City law agent authorized to carry a weapon:

1. Ascertain identity of former/retired member of the service or the off duty/retired law enforcement agent involved.
2. Determine if individual has a weapon on his/her person.
3. Request, if armed, personal identification and pistol license, when appropriate.
4. Request to see his/her New York Police Department identification card or other official law enforcement identification.
5. Request patrol supervisor to respond to scene."

(Patrol Guide 212-36, ¶1-5).

In this case, Respondent blatantly refused to provide police identification when requested by an on-duty police officer in the performance of his duties. This request should have been seen by Respondent as a reasonable one, given this Department's own procedures for dealing with off-duty officers from other jurisdictions. Respondent then changed his position to demanding Lieutenant Brown's identification before tendering his own. This conduct was unreasonable and uncooperative. Respondent's assertion that he requested Lieutenant Brown's identification because he was unsure that Lieutenant Brown was actually a police officer is incredible. Thus, I find that Respondent failed to comply with Lieutenant Brown's request to produce police identification after Respondent asserted that he was a member of this Department.

Accordingly, I find Respondent Guilty of Specification 2.

Fitness for Duty

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent was unfit for duty at the time of his encounter with Lieutenant Brown. While I credit Lieutenant Brown's testimony that Respondent had glassy eyes and had some apparent difficulty in walking, those facts alone are insufficient to support a finding of unfitness for duty. It is undisputed that Lieutenant Brown did not smell the

scent of alcohol on Respondent's breath. Even adding the articulated conclusion of one of the other police officers working with Lieutenant Brown that he thought Respondent was "shitfaced," any opinion he would have formed as to Respondent's sobriety would have been speculative.

In addition, the undisputed evidence in the record establishes that Respondent reported for his shift that evening in a timely manner. While not dispositive of the issue, it is more likely than not that Respondent's state of sobriety was not of such character as to have attracted the scrutiny of either fellow police officers or supervisors during that tour of duty.

Accordingly, Respondent is found Not Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested that Respondent forfeit 20 vacation days. Inasmuch as I have recommended findings of Not Guilty to Specifications 1 and 3, the requested penalty is too severe.

Respondents in previous cases have forfeited from 10 to 15 days for failure to identify themselves as a Member of the Service (*Disciplinary Case No. 2014-J2046* [July 24, 2015])[Ten-year police officer with no prior disciplinary record forfeits ten vacation days for failing to identify herself as a member of the service when being questioned by detectives who went to her house to arrest her brother. In addition, she failed to cooperate with the detectives in that she stated that her brother was not at home without having checked to see if he was inside his

apartment]; *Disciplinary Case No. 2013-9397* [June 18, 2015][Eight-year police officer with no prior disciplinary record forfeits 15 vacation days after a mitigation hearing for failing to promptly identify himself as a member of the service during a car stop. He testified that he intentionally waited a couple of minutes before identifying himself because he wanted to ascertain how the on-duty officers would treat him upon seeing his PBA card. In addition, Respondent failed to carry his shield while armed]).

In this case, Respondent behaved in a manner unbefitting a member of this Department. His deportment while engaged in an interaction with another member of the law enforcement community, who was in the lawful execution of his duties, was inexcusable. The purpose of requiring members of this Department to identify themselves in law enforcement encounters is threefold: (1) to acknowledge the rights and responsibilities of members of law enforcement to the public and to one another; (2) to assure the challenging officer that the challenged officer acknowledges the challenging officer's authority in the encounter and that he presents no obstacle to the proper performance of the challenging officer's duties; and (3) that the challenged officer is prepared to assist the challenging officer, if requested, in the performance of his duties.

By creating an avoidable, childish standoff situation with Lieutenant Brown, Respondent besmirched the reputation of this Department and risked escalating an otherwise uneventful enforcement action into a "blue on blue" confrontation. Accordingly, I recommend that he forfeit ten vacation days.

APPROVED

DEC 28 2017
James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GIUSEPPE OLIVERI
TAX REGISTRY NO. 939146
DISCIPLINARY CASE NO. 2017-16838

Respondent was appointed to the Department on July 11, 2005. On his last three annual performance evaluations, he received overall ratings of 3.0, "Competent," in 2014, 2015, and 2016. He has also been awarded two medals for Excellent Police Duty. In his twelve years of service, Respondent has reported sick on [REDACTED]

Respondent has no prior formal disciplinary history. On June 12, 2017, he was placed on Level 1 Disciplinary Monitoring in connection with the instant charges and specifications; that monitoring remains ongoing.

A handwritten signature in black ink, appearing to read "Paul M. Gamble".

Paul M. Gamble
Assistant Deputy Commissioner Trials